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ATTORNEYS FOR DEFENDANTS ASIA  
FIVE EIGHT LLC d/b/a TAO RESTAURANT,  
MARC PACKER, RICHARD WOLF, KIM  
KURLANCHIK, PAUL GOLDSTEIN AND  
ANTHONY N. DADDABBO

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

GREG PRASKER and MICHELLE  
IARUSSO, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

-against-

ASIA FIVE EIGHT LLC d/b/a TAO  
RESTAURANT, MARC PACKER,  
RICHARD WOLF, KIM KURLANCHIK,  
PAUL GOLDSTEIN and TONY  
DADDABBO,

Defendants.

No. 08 Civ 5811 (MGC) (JCF)

**DEFENDANT ASIA FIVE EIGHT LLC  
d/b/a TAO RESTAURANT'S ANSWER  
AND AFFIRMATIVE AND OTHER  
DEFENSES TO PLAINTIFFS' CLASS  
ACTION COMPLAINT**

Defendant Asia Five Eight LLC d/b/a Tao Restaurant ("Defendant Tao"), by and through its attorneys Jackson Lewis LLP, for its Answer to Plaintiffs' Class Action Complaint (the "Complaint") respectfully alleges as follows:

1. Defendant Tao denies the allegations set forth in Paragraph "1" of the Complaint, except admits that Defendant Tao is a restaurant located in midtown Manhattan.

2. Paragraph “2” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “2” of the Complaint.

3. Defendant Tao denies the allegations set forth in Paragraph “3” of the Complaint, except admits that Plaintiffs purport to bring this action to recover the relief set forth in Paragraph “3” of the Complaint.

4. Paragraph “4” of the Complaint contains conclusions of law only and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “4” of the Complaint, except admits that Plaintiffs purport to proceed as set forth in Paragraph “4” of the Complaint.

5. Paragraph “5” of the Complaint contains conclusions of law only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “5” of the Complaint, except admits that Plaintiffs purport to proceed as set forth in Paragraph “5” of the Complaint.

**AS AND FOR THE PARTIES**

6. Defendant Tao denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “6” of the Complaint, except admits, upon information and belief, that Plaintiff Greg Prasker is an adult.

7. Defendant Tao admits the allegations set forth in Paragraph “7” of the Complaint.

8. Defendant Tao denies the allegations set forth in Paragraph “8” of the Complaint, except avers that a written consent form for Plaintiff Greg Prasker is attached to the

Complaint as Exhibit “A.”

9. Paragraph “9” of the Complaint contains conclusions of law only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “9” of the Complaint.

10. Defendant Tao denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “10” of the Complaint, except admits, upon information and belief, that Plaintiff Michelle Iarusso is an adult.

11. Defendant Tao denies the allegations set forth in Paragraph “11” of the Complaint, except admits that Defendant Tao employed Plaintiff Iarusso as a server.

12. Defendant Tao denies the allegations set forth in Paragraph “12” of the Complaint, except avers that a written consent form for Plaintiff Michelle Iarusso is attached to the Complaint as Exhibit “A.”

13. Paragraph “13” of the Complaint contains conclusions of law only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “13” of the Complaint.

14. Paragraph “14” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “14” of the Complaint.

15. Defendant Tao denies the allegations set forth in Paragraph “15” of the Complaint, except admits that Defendant Tao is a restaurant located at 42 East 58<sup>th</sup> Street, New York, New York.

16. Paragraph “16” of the Complaint sets forth legal conclusions only, and

therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “16” of the Complaint.

17. Defendant Tao admits the allegations set forth in Paragraph “17” of the Complaint.

18. Defendant Tao admits the allegations set forth in Paragraph “18” of the Complaint.

19. Defendant Tao admits the allegations set forth in Paragraph “19” of the Complaint.

20. Paragraph “20” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “20” of the Complaint.

21. Paragraph “21” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “21” of the Complaint.

22. Defendant Tao admits the allegations set forth in Paragraph “22” of the Complaint.

23. Defendant Tao denies the allegations set forth in Paragraph “23” of the Complaint, except avers that Defendant Marc Packer is a member of Defendant Tao.

24. Paragraph “24” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “24” of the Complaint.

25. Paragraph “25” of the Complaint sets forth legal conclusions only, and

therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “25” of the Complaint.

26. Paragraph “26” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “26” of the Complaint.

27. Defendant Tao denies the allegations set forth in Paragraph “27” of the Complaint, except avers that Defendant Richard Wolf is a member of Defendant Tao.

28. Paragraph “28” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “28” of the Complaint.

29. Paragraph “29” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “29” of the Complaint.

30. Paragraph “30” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “30” of the Complaint.

31. Defendant Tao denies the allegations set forth in Paragraph “31” of the Complaint, except avers that Defendant Kim Kurlanchik is a member of Defendant Tao.

32. Paragraph “32” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “32” of the Complaint.

33. Paragraph “33” of the Complaint sets forth legal conclusions only, and

therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “33” of the Complaint.

34. Paragraph “34” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “34” of the Complaint.

35. Defendant Tao denies the allegations set forth in Paragraph “35” of the Complaint.

36. Paragraph “36” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “36” of the Complaint.

37. Paragraph “37” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “37” of the Complaint.

38. Paragraph “38” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “38” of the Complaint.

39. Defendant Tao denies the allegations set forth in Paragraph “39” of the Complaint.

40. Paragraph “40” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “40” of the Complaint.

41. Defendant Tao denies the allegations set forth in Paragraph “41” of the

Complaint, except admits that Plaintiff Greg Prasker's employment was terminated in May 2008.

42. Paragraph "42" of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph "42" of the Complaint.

43. Paragraph "43" of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph "43" of the Complaint.

#### **AS AND FOR JURISDICTION AND VENUE**

44. Paragraph "44" of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph "44" of the Complaint, except admits that Plaintiffs purport to invoke the jurisdiction of the Court as set forth in Paragraph "44."

45. Paragraph "45" of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph "45" of the Complaint, except admits that Plaintiffs purport to invoke the jurisdiction of the Court as set forth in Paragraph "45."

46. Paragraph "46" of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph "46" of the Complaint.

47. Paragraph "47" of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph "47" of the Complaint, except admits that venue is proper.

**AS AND FOR CLASS ACTION ALLEGATION**

48. Defendant Tao denies the allegations set forth in Paragraph “48” of the Complaint, except admits that Plaintiffs purport to bring the Second, Fourth, Fifth and Sixth Causes of Action as set forth in Paragraph “48.”

49. Paragraph “49” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “49” of the Complaint.

50. Paragraph “50” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “50” of the Complaint.

51. Paragraph “51” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “51” of the Complaint.

52. Paragraph “52” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “52” of the Complaint.

53. Paragraph “53” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “53” of the Complaint.

(a) Paragraph “53(a)” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “53(a)” of the Complaint.



(b) Paragraph “53(b)” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “53(b)” of the Complaint.

(c) Paragraph “53(c)” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “53(c)” of the Complaint.

(d) Paragraph “53(d)” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “53(d)” of the Complaint.

(e) Paragraph “53(e)” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “53(e)” of the Complaint.

(f) Paragraph “53(f)” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “53(f)” of the Complaint.

(g) Paragraph “53(g)” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “53(g)” of the Complaint.

(h) Paragraph “53(h)” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “53(h)” of the Complaint.

(i) Paragraph “53(i)” of the Complaint sets forth legal conclusions

only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “53(i)” of the Complaint.

(j) Paragraph “53(j)” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “53(j)” of the Complaint.

(k) Paragraph “53(k)” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “53(k)” of the Complaint.

54. Paragraph “54” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “54” of the Complaint.

55. Paragraph “55” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “55” of the Complaint.

56. Paragraph “56” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “56” of the Complaint.

57. Paragraph “57” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “57” of the Complaint.

**AS AND FOR COLLECTIVE ACTION ALLEGATIONS**

58. Defendant Tao denies the allegations set forth in Paragraph “58” of the

Complaint, except admits that Plaintiffs purport to bring the First and Third Causes of Action as set forth in Paragraph “58” of the Complaint.

59. Paragraph “59” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “59” of the Complaint.

**AS AND FOR CLASS-WIDE FACTUAL ALLEGATIONS**

60. Paragraph “60” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “60” of the Complaint.

61. Paragraph “61” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “61” of the Complaint.

(a) Paragraph “61(a)” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “61(a)” of the Complaint.

(b) Paragraph “61(b)” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “61(b)” of the Complaint.

(c) Paragraph “61(c)” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “61(c)” of the Complaint.

(d) Paragraph “61(d)” of the Complaint sets forth legal conclusions

only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “61(d)” of the Complaint.

(e) Paragraph “61(e)” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “61(e)” of the Complaint.

62. Paragraph “62” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “62” of the Complaint.

63. Paragraph “63” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “63” of the Complaint.

64. Paragraph “64” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “64” of the Complaint.

65. Defendant Tao denies the allegations set forth in Paragraph “65” of the Complaint.

**AS AND FOR PLAINTIFFS’ FACTUAL ALLEGATIONS**

66. Defendant Tao denies the allegations set forth in Paragraph “66” of the Complaint.

67. Defendant Tao denies the allegations set forth in Paragraph “67” of the Complaint.

68. Defendant Tao denies the allegations set forth in Paragraph “68” of the

Complaint.

69. Defendant Tao denies the allegations set forth in Paragraph “69” of the

Complaint.

70. Defendant Tao denies the allegations set forth in Paragraph “70” of the

Complaint.

71. Defendant Tao denies the allegations set forth in Paragraph “71” of the

Complaint.

72. Defendant Tao denies the allegations set forth in Paragraph “72” of the

Complaint.

73. Defendant Tao denies the allegations set forth in Paragraph “73” of the

Complaint.

74. Defendant Tao denies the allegations set forth in Paragraph “74” of the

Complaint.

75. Defendant Tao denies the allegations set forth in Paragraph “75” of the

Complaint.

76. Defendant Tao denies the allegations set forth in Paragraph “76” of the

Complaint.

77. Defendant Tao denies the allegations set forth in Paragraph “77” of the

Complaint.

78. Defendant Tao denies the allegations set forth in Paragraph “78” of the

Complaint.

79. Defendant Tao denies the allegations set forth in Paragraph “79” of the

Complaint.

80. Defendant Tao denies the allegations set forth in Paragraph “80” of the Complaint.

81. Defendant Tao denies the allegations set forth in Paragraph “81” of the Complaint.

82. Defendant Tao denies the allegations set forth in Paragraph “82” of the Complaint.

**AS AND FOR THE FIRST CAUSE OF ACTION**

83. In response to Paragraph “83” of the Complaint, Defendant Tao repeats, and realleges each and every response to Paragraphs “1” through “82” of the Complaint as if set forth fully herein.

84. Paragraph “84” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “84” of the Complaint.

85. Paragraph “85” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “85” of the Complaint.

86. Paragraph “86” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “86” of the Complaint.

87. Paragraph “87” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the

allegations set forth in Paragraph “87” of the Complaint.

88. Paragraph “88” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “88” of the Complaint.

89. Paragraph “89” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “89” of the Complaint.

90. Paragraph “90” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “90” of the Complaint.

91. Paragraph “91” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “91” of the Complaint.

92. Paragraph “92” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “92” of the Complaint.

93. Paragraph “93” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “93” of the Complaint.

**AS AND FOR THE SECOND CAUSE OF ACTION**

94. In response to Paragraph “94” of the Complaint, Defendant Tao repeats, and realleges each and every response to Paragraphs “1” through “93” of the Complaint as if set

forth fully herein.

95. Paragraph “95” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “95” of the Complaint.

96. Paragraph “96” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “96” of the Complaint.

97. Paragraph “97” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “97” of the Complaint.

98. Paragraph “98” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “98” of the Complaint.

99. Paragraph “99” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “99” of the Complaint.

100. Paragraph “100” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “100” of the Complaint.

101. Paragraph “101” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “101” of the Complaint.



102. Paragraph “102” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “102” of the Complaint.

103. Paragraph “103” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “103” of the Complaint.

104. Paragraph “104” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “104” of the Complaint.

**AS AND FOR THE THIRD CAUSE OF ACTION**

105. In response to Paragraph “105” of the Complaint, Defendant Tao repeats, and realleges each and every response to Paragraphs “1” through “104” of the Complaint as if set forth fully herein.

106. Paragraph “106” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “106” of the Complaint.

107. Defendant Tao denies the allegations set forth in Paragraph “107” of the Complaint.

108. Paragraph “108” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “108” of the Complaint.

**AS AND FOR THE FOURTH CAUSE OF ACTION**

109. In response to Paragraph “109” of the Complaint, Defendant Tao repeats, and realleges each and every response to Paragraphs “1” through “108” of the Complaint as if set forth fully herein.

110. Paragraph “110” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “110” of the Complaint.

111. Paragraph “111” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “111” of the Complaint.

112. Paragraph “112” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “112” of the Complaint.

113. Paragraph “113” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “113” of the Complaint.

**AS AND FOR THE FIFTH CAUSE OF ACTION**

114. In response to Paragraph “114” of the Complaint, Defendant Tao repeats, and realleges each and every response to Paragraphs “1” through “113” of the Complaint as if set forth fully herein.

115. Paragraph “115” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the

allegations set forth in Paragraph “115” of the Complaint.

116. Paragraph “116” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “116” of the Complaint.

117. Paragraph “117” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “117” of the Complaint.

**AS AND FOR THE SIXTH CAUSE OF ACTION**

118. In response to Paragraph “118” of the Complaint, Defendant Tao repeats, and realleges each and every response to Paragraphs “1” through “117” of the Complaint as if set forth fully herein.

119. Paragraph “119” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “119” of the Complaint.

120. Paragraph “120” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “120” of the Complaint.

121. Paragraph “121” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “121” of the Complaint.

122. Paragraph “122” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the

allegations set forth in Paragraph “122” of the Complaint.

123. Paragraph “123” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “123” of the Complaint.

124. Paragraph “124” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “124” of the Complaint.

125. Paragraph “125” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “125” of the Complaint.

126. Paragraph “126” of the Complaint sets forth legal conclusions only, and therefore no response is required. To the extent a response is required, Defendant Tao denies the allegations set forth in Paragraph “126” of the Complaint.

#### **AS AND FOR AFFIRMATIVE AND OTHER DEFENSES**

Defendant Tao asserts the following affirmative and other defenses without assuming any burden of production or proof that it would not otherwise have:

#### **AS AND FOR A FIRST DEFENSE**

Plaintiffs fail to state a claim upon which relief may be granted, either on their own behalf or on behalf of those persons whom they purport to represent.

#### **AS AND FOR A SECOND DEFENSE**

Plaintiffs’ claims are barred, in whole or in part, by the applicable limitations period.

**AS AND FOR A THIRD DEFENSE**

This case may not be maintained as a collective action because the named Plaintiffs are not similarly-situated to or otherwise adequate representatives for the persons whom they purport to represent.

**AS AND FOR A FOURTH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by the de minimus doctrine.

**AS AND FOR A FIFTH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches, estoppel, waiver and/or other equitable defenses.

**AS AND FOR A SIXTH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands based upon Plaintiffs' violations of Defendants' timekeeping and recordkeeping policies, including falsification of time records.

**AS AND FOR A SEVENTH DEFENSE**

Plaintiffs lack standing to be and are not adequate representatives of the putative collective action and, as such, the Court should not authorize notice to be issued or a collective action to be maintained under the FLSA.

**AS AND FOR AN EIGHTH DEFENSE**

The Complaint is barred, in whole or in part, pursuant, inter alia, to the Portal-to-Portal Act and the FLSA.

**AS AND FOR A NINTH DEFENSE**

This case is not appropriate for collective action because the facts and law common to the case, if any, are insignificant compared to the individual facts and issues particular to Plaintiffs and to the purported collective action members.

**AS AND FOR A TENTH DEFENSE**

Plaintiffs cannot establish or maintain a collective action because it cannot be demonstrated that a collective action is superior to other methods available for adjudicating any controversy.

**AS AND FOR AN ELEVENTH DEFENSE**

Plaintiffs are not entitled to equitable relief insofar as they have an adequate remedy at law.

**AS AND FOR A TWELFTH DEFENSE**

Plaintiffs' claims for damages are barred or limited by Defendants' good faith efforts to comply with applicable law.

**AS AND FOR A THIRTEENTH DEFENSE**

Payments to Plaintiffs were made in good faith and in conformity with and in reliance on an administrative regulation, order, ruling, approval, interpretation, administrative practice, and/or enforcement policy of the United States Department of Labor.

**AS AND FOR A FOURTEENTH DEFENSE**

Plaintiffs' claims are barred or should be reduced, in whole or in part, by exclusions, exceptions, credits, recoupment or offsets permissible under the FLSA.

**AS AND FOR A FIFTEENTH DEFENSE**

To the extent any members of the putative classes have signed a release and/or waiver encompassing claims alleged in the Complaint or a contractual waiver or agreement contrary to their claims herein, their claims are barred by that release, waiver or agreement.

**AS AND FOR A SIXTEENTH DEFENSE**

In addition to the foregoing defenses, Defendant Tao retains the right to amend its Answer to raise additional affirmative and other defenses or pursue any available counterclaims against Plaintiffs or any putative class member who joins this action as those claims become known during this litigation.

**WHEREFORE**, Defendant Tao prays that the Court enter a judgment:

1. dismissing the Complaint with prejudice;
2. granting Defendant Tao its costs, including attorney's fees, incurred in this action; and
3. granting such other and further relief as the Court may deem just and proper

Dated: New York, New York  
August 19, 2008

Respectfully submitted,

JACKSON LEWIS LLP  
59 Maiden Lane, 39<sup>th</sup> Floor  
New York, New York 10038-4502  
(212) 545-4000

By: /s/ Felice B. Ekelman  
Felice B. Ekelman (FE 5692)  
Allison C. Spivak (AS 1628)

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

I hereby certify that on August 19, 2008, a true and correct copy of Defendant Asia Five Eight LLC d/b/a Tao Restaurant's Answer And Affirmative And Other Defenses To Plaintiffs' Class Action Complaint was served on Plaintiffs by placing said document in a properly addressed postage-prepaid envelope and causing it to be mailed to Plaintiffs' counsel of record, Justin Swartz, Esq., Outten & Golden LLP, 3 Park Avenue, 29<sup>th</sup> Floor, New York, New York 10016.

/s/ Allison C. Spivak

Allison C. Spivak